



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201032042**

Release Date: 8/13/2010

Date: 5/18/2010

Contact Person:

Contact's Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4945.00-00

Legend:

County =

Dear :

We have considered your representative's letter requesting approval of your scholarship grant procedures under section 4945(g) of the Internal Revenue Code ("Code").

Facts:

You have been recognized as an organization described in section 501(c)(3) of the Code and classified as a private foundation under section 509(a). Your college scholarship grants program will be for graduating seniors of all the high schools in County. Grantees will be selected by a committee of individuals on the basis of pertinent criteria, such as grade transcripts, test scores, activities, personal statements and interviews. The selection of all scholarship recipients will be on an objective and nondiscriminatory basis. You have stated that no disqualified person as defined in section 4946 with respect to you will be eligible for consideration. Your donors will not be allowed to designate scholarship recipients or other educational grantees. The grants will provide money for tuition, and may pay for other expenses of attending college. You stated that there will be approximately 300-400 eligible students each year. You intend initially to grant 8 to 10 scholarships per year. You may at your discretion make a scholarship loan rather than a scholarship grant but will do so in the same procedural manner.

If a scholarship is awarded to a student enrolled in a medical school described in section 170(b)(1)(A)(ii) of the Code, such scholarship may cover up to the entire amount of the recipient's tuition, board, room, books, supplies, travel costs, and incidental expenses consistent with your scholarship procedures. As a condition of such medical scholarship, a recipient must agree to practice medicine in County for a number of years equal to the duration of the scholarship he or she receives from you.

You will pay the grants or loans directly to educational institutions described in section 170(b)(1)(A)(ii) in the manner provided by section 53.4945-4(c)(5) of the Foundation and Similar Excise Tax Regulations ("regulations"). You have established procedures for retention of records, annual reports, and supervision and investigation.

Rulings Requested:

You have requested us to rule that your scholarship procedure meets section 4945(g) of the Code, that scholarship grants awarded by you pursuant to your scholarship grant procedure will not be taxable expenditures under section 4945(d)(3), and that your scholarship administration satisfies the requirements for supervision and investigation in section 53.4945-4(c)(5) of the regulations

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or educational purposes.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are private foundations subject to the provisions of Chapter 42 of the Code.

Section 4941 of the Code, in general, provides for excise tax on, and requires correction of, any use of a private foundation's assets for the benefit of any disqualified person as defined in section 4946.

Section 4945 of the Code imposes excise tax on a private foundation's making of any "taxable expenditure" as defined, in pertinent part, by sections 4945(d)(3) and 4945(d)(5).

Section 4945(d)(3) of the Code provides that a taxable expenditure includes an amount paid by a private foundation as a grant to an individual for study or other similar purposes by such individual, unless the grant meets the requirements under section 4945(g) of the Code for approval in advance by the Service.

Section 4945(g)(1) of the Code provides that a taxable expenditure under section 4945(d)(3) does not include any grant to an individual for study if the grant is made under a procedure approved in advance by the Service, constitutes a scholarship under section 117(a) of the Code (as in effect on the day before the Tax Reform Act of October 22, 1986), and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 4945(g)(3) of the Code provides that subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary, if it is demonstrated to the satisfaction of the Secretary that--the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 4946 of the Code indicates, in part, that a disqualified person is a substantial contributor, a director, an officer, or a manager of the private foundation. Further, section 4946(a)(1)(D) provides that a disqualified person includes the family of a disqualified person

defined under section 4946(d) including spouse, ancestors, children, grandchildren, great grandchildren, and spouses of children, grandchildren, and great grandchildren.

Section 53.4945-4(d)(3) of the regulations provides that if, by the 45th day after a request for approval of grant procedures has been properly submitted to the Internal Revenue Service, the private foundation has not been notified that its grant-making procedures are not acceptable, its grant-making procedures shall be considered as approved from the date of submission of its request for approval until receipt of actual notice from the Internal Revenue Service that such procedures do not meet the requirements of section 4945(g) of the Code.

Section 53.4945-4(b) of the regulations requires that grantees under section 4945(g) of the Code must be selected on an objective and non-discriminatory basis. The group of eligible grantees must be broad enough to enable the giving of the grants to achieve an exempt purpose. The criteria for selection of grantees must be related to the exempt purpose of the grant. The persons selecting the grantees must not be in a position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

Section 53.4945-4(c)(2) of the regulations provides that, at least once per year, the private foundation must obtain a reporting, verified by the educational institution, on the grantee's progress for each academic period.

Section 53.4945-4(c)(4) of the regulations provides that, if grantee reports submitted or other information, including failure to submit reports, indicate that any part of a grant is not being used for purposes of the grant, the grantor foundation is under a duty to investigate and, while conducting its investigation, must withhold further payments. The grantor's reasonable steps to recover misused grant funds must include legal action where appropriate, unless legal action would not, in all probability, result in satisfaction of execution on the judgment.

Section 53.4945-4(c)(5) of the regulations provides that the annual report under section 53.4945-4(c)(2) and the duty to investigate under section 53.4945-4(c)(4) of the regulations can also be met if the grantor pays the scholarship grant under section 4945(g)(1) of the Code to the grantee's educational institution which agrees to use the grant funds only if the grantee is enrolled at such educational institution and the grantee's standing is consistent with the purposes and conditions of the grant.

Section 53.4945-4(c)(6) of the regulations provides that the grantor private foundation must retain adequate records on all of its grants to individuals for study or similar purposes under section 4945(d)(3) of the Code. Such records include: all information which the foundation secures to evaluate the qualifications of potential grantees; identification of all grantees (including any relationship of a grantee to the grantor foundation sufficient to assure that such grantee is not a disqualified person under section 4946); specification of the amount and purpose of each grant; and the follow-up information which the grantor obtains from the grantees under sections 53.4945-4(c)(2) and 53.4945-4(c)(4), cited above.

Revenue Ruling 77-44, 1977-1 C.B. 355, indicates that a scholarship grant to a grantee who makes a moral commitment to perform service in a particular area after graduation is a grant to further an exempt purpose under section 4945(g)(3) of the Code, rather than section 4945(g)(1), and that such grant is not excludable from income under section 117.

Analysis / Conclusion:

Based upon the information you submitted as to your scholarship grants to nonmedical school students, and assuming that your program will be conducted as proposed with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures in the awarding of such scholarship grants comply with the requirements of section 4945(g)(1) of the Code. Expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code.

Based on the information you submitted as to your possible scholarship grants to medical school students who intend to practice in County, and assuming that your program will be conducted as proposed with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures in the awarding of such scholarship grants comply with the requirements of section 4945(g)(3) of the Code. Expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) or 4945(d)(5).

Similarly, we rule that your scholarship loans, if any, made instead of, or in addition to, your scholarship grants, under the same scholarship procedures approved above, comply with the requirements of section 4945(g)(3) of the Code and, thus, such scholarship loans made in accordance with your approved scholarship procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) or 4945(d)(5).

In reply to your other specific rulings requested, we rule, with respect to the both nonmedical and medical scholarships, that, as so provided by section 53.4945-4(c)(5) of the regulations, your payment of grants or loans directly to the educational institutions in the manner described in that section 53.4945-4(c)(5) will satisfy the supervision requirement of section 53.4945-4(c)(2) and the investigation and recovery requirement of section 53.4945-4(c)(4).

This ruling letter is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be made to your organization's creators, officers, directors, trustees, or members or spouses of the selection committee, or for any purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

This approval of your grant-making procedures is a one-time approval of your system of standards and procedures for selecting recipients of grants that meets the requirements of section 4945(g)(1) of the Code as to nonmedical school grants and section 4945(g)(3) as to any grants to attend medical school with a moral commitment to practice as a doctor in the County. This approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in this request.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions, which we intend to make available for public inspection, is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

Sincerely,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure: Notice 437